

Serial No.: 09/650,174

Docket No.: F-189

REMARKS

Page 1 of the specification has been amended to make a specific reference to the prior applications from which priority is claimed. The claim for priority was originally made on the PTO/SB/05 form filed on August 29, 2000. Additionally, since the actual filing date of this application is before November 29, 2000, the time periods as indicated in 37 CFR 1.78(2)(ii), requiring that a reference to each such prior-filed application be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application, do not apply. Accordingly, it is respectfully submitted that Applicants have complied with all conditions for receiving the benefit of the earlier filing date under 35 U.S.C. 120.

The Office Action indicates that the Information Disclosure Statement filed on August 29, 2000 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. The Examiner did not consider the non-patent literature since a copy of each of the references was not provided. Applicants respectfully direct the Examiner's attention to 37 CFR 1.98(d) which states:

A copy of any patent, publication, pending U.S. application or other information, as specified in paragraph (a) of this section, listed in an information disclosure statement is required to be provided, even if the patent, publication, pending U.S. application or other information was previously submitted to, or cited by, the Office in an earlier application, unless:

- (1) The earlier application is properly identified in the information disclosure statement and is relied on for an earlier effective filing date under 35 U.S.C. 120; and
- (2) The information disclosure statement submitted in the earlier application complies with paragraphs (a) through (c) of this section .

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The references not considered by the Examiner were submitted to the Office in the parent application in an information disclosure statement that complied with paragraphs (a) through (c) of 37 CFR 1.98. In addition, the parent applications, Ser. Nos. 09/133,706 and 08/518,404, are properly identified on page 2 of the information disclosure statement and are being relied upon for an earlier effective filing date. Additionally, the Examiner's attention is respectfully directed to M.P.E.P. 609(I)(A)(2) which states "The examiner will consider information which has been considered by the Office in a parent application when examining . . . (B) a divisional application filed under 37 CFR 1.53(b) or filed under former 37 CFR 1.60 . . . Such information need not be resubmitted in the continuing application unless the application desires the information to be printed on the patent." Applicants respectfully request that all references cited in the IDS filed on August 29, 2000, be considered and the PTO-1449 form be initialed and returned with the next communication.

Claims 35 and 36 are pending in this application. Claims 35 and 36 were rejected under 35 U.S.C. §103(a) as being unpatentable over Fisher (U.S. Patent No. 4,868,877) in view of Musgrave (U.S. Patent No. 6,105,010). Reconsideration is respectfully requested.

As noted above, the present application is a divisional application of Serial No. 09/133,706, filed Aug. 13, 1998, (now U.S. Patent No. 6,134,328), which is a continuation application of Serial No. 08/518,404, filed Aug. 21, 1995, (now U.S. Patent No. 5,796,841). Accordingly, the effective filing date of this application is August 21, 1995.

Musgrave was filed on December 31, 1997, and claims the benefit of provisional applications 60/046,012, filed May 9, 1997; 60/067,182, filed December 1, 1997; and 60/055,534, filed August 13, 1997. Thus, the earliest possible effective filing date for Musgrave is May 9, 1997. Therefore, Musgrave, having an earliest possible effective filing date of May 9, 1997, is not prior art with respect to this application (priority date of August 21, 1995). Accordingly, Applicants respectfully submit that this rejection is improper and should be removed by the Examiner.

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Claims 35 and 36 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 5,796,841 in view of Fisher (U.S. Patent No. 4,868,877). A Terminal Disclaimer is being filed concurrently herewith.

In view of the foregoing remarks, it is respectfully submitted that the claims of this case are in a condition for allowance and favorable action thereon is requested.

Respectfully submitted,



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MARKED VERSION TO SHOW CHANGES

In The Specification:

Page 1, before "Field of the Invention", add the following paragraph:

-- This application is a divisional application of Serial No. 09/133,706, filed Aug. 13, 1998, now U.S. Patent No. 6,134,328, which is a continuation application of Serial No. 08/518,404, filed Aug. 21, 1995, now U.S. Patent No. 5,796,841.--